

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
GENOMETRICA RESEARCH, INC., :
:
Plaintiff, : 11-CV-5802 (PKC)
:
v. : April 30, 2013
: Central Islip, New York
GORBOVITSKI, et al, :
:
Defendants. :
:
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY CONFERENCE
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: PANAGIOTA BETTY TUFARIELLO, ESQ.
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1 THE CLERK: Calling civil case 11-5802, Genometrica
2 v. Gorbovitski, et al. Please state your appearance for the
3 record. Plaintiff? You need to press the button.

4 MS. TUFARIELLO: Good afternoon, Your Honor. My
5 name is Panagiota Betty Tufariello, and I am with
6 Intellectual, the Law Offices of PB Tufariello, PC. I'm here
7 this afternoon on behalf of the plaintiff, Genometrica
8 Research, Incorporated.

9 THE COURT: Good afternoon.

10 MR. MORRISON: Actually, good afternoon, Your Honor.
11 I'm Arthur Morrison. I represent the interests of the
12 defendants in this matter.

13 THE COURT: And good afternoon as well. Well, it's
14 been a while, obviously, since we've seen each other so I want
15 to take a moment at least to recap for the record at least
16 where I perceive we are at this juncture.

17 First of all, you've just recently been notified I
18 see that the case is now reassigned to Judge Chin in Brooklyn
19 as a newly designated eastern district judge, district judge.
20 Looking back on this case, last March, and I don't mean this
21 most recent March, but last March, March 12, 2012, when we met
22 for the initial conference I issued a limited case management
23 order and directed that paper discovery go forward. That was
24 to be completed by May 29th. And January -- I'm sorry, June
25 15th was set as the deadline to amend pleadings. Then with the

1 permission of Judge Spatt in his order of March 20, 2012, the
2 plaintiff was permitted to file an amended complaint and that
3 filing was made on April 2, 2012.

4 Subsequently, defendants moved for a second time to
5 dismiss the amended complaint, and that motion was filed on
6 April 21, 2012. On June 14, 2012, the plaintiffs filed a
7 letter motion to compel responses to outstanding discovery.
8 And on June 24th, the defendants filed a motion for a
9 protective order. I met with both sides on June 28th and both
10 the motion to compel and the motion for protective order were
11 granted to the extent set forth in the orders that I issued.

12 Then on August 5th, the defendants, that's 2012,
13 defendants filed a motion for extension of time to complete
14 discovery. I granted that request. The next major event here
15 is January 31st of this year. Judge Spatt, in ruling on the
16 motion to dismiss dismissed the unfair competition claims,
17 counts three and four of the amended complaint, along with
18 count 18, and denied the motion to dismiss in all other
19 respects. At that time, Judge Spatt gave plaintiffs
20 permission to file a second amended complaint within 20 days
21 in accordance with his order.

22 Then on March 1, 2013, the defendants filed an
23 answer to the amended complaint, and I see there does not
24 appear to have been a second amended complaint ever filed.
25 And then on March 26, 2013 the defendants filed the motion for

1 extension of time to complete discovery, and that was granted.

2 And so now here we are, and the first thing I want
3 to find out from both of you is where's discovery at this
4 point? So Ms. Tufariello, since you represent the plaintiff,
5 I'm going to let you go first.

6 MS. TUFARIELLO: We did in fact receive documents,
7 and I should say not documents, but responses to our request
8 for documents, as well as responses to our interrogatories I
9 believe. We have a number of issues with the responses that
10 were provided to us, namely some of the requests that we made,
11 defendants said that we represent the research foundation, and
12 therefore, those documents are in our control. We do not.
13 And so we asked for whatever documents that would be
14 responsive. We'd like to see them.

15 We're in the process of compiling a letter that
16 we're going to be sending to Mr. Morrison where we're going --

17 THE COURT: This is a deficiency letter basically?

18 MS. TUFARIELLO: I'm sorry?

19 THE COURT: A deficiency letter?

20 MS. TUFARIELLO: That is correct. Because of the
21 number of requests for documents, as well as the number of
22 interrogatories, they're quite numerous, and we would like to
23 set the record for purposes, if necessary, of bringing a
24 motion to compel. We're going to be laying out all the
25 requests for documents that we have issues with, what the

1 problems are, and we're going to try to work things out in
2 accordance with the rules before we actually bring it to your
3 attention.

4 So while we have received responses to our request
5 for documents, as well as our interrogatories, there are
6 deficiencies that we are in the process of wrapping up and
7 bringing -- and we will be bringing to Mr. Morrison's
8 attention.

9 THE COURT: All right.

10 MS. TUFARIELLO: It's our anticipation that we're
11 going to have that in Morrison's hand by next week. This week
12 is holy week for Christian Orthodox, and I'm Greek Orthodox.
13 So Friday my offices will be closed and I'll be addressing a
14 lot of these issues next week when I get back to the office.

15 THE COURT: All right. Let me just take a look at
16 the calendar. All right. So you think by May 17th you would
17 have that letter to --

18 MS. TUFARIELLO: Yes, Your Honor.

19 THE COURT: -- opposing counsel? All right.

20 MS. TUFARIELLO: Yes.

21 THE COURT: Then I'd like to set that as at least --
22 we need to put some parameters down here so that we --

23 MS. TUFARIELLO: I agree.

24 THE COURT: -- understand where we're going. All
25 right. So May 17th your deficiency letter will arrive to Mr.

1 Morrison. All right.

2 Mr. Morrison, once you receive that, I'm going to
3 give you two weeks to have a meet and confer with Ms.
4 Tufariello to try to work out whatever these issues are. All
5 right?

6 MR. MORRISON: Thank you, Judge.

7 THE COURT: That would put you at the 31st. And
8 since Memorial Day falls in there, I'll give you the weekend.

9 MR. MORRISON: I may need another week, Your Honor.
10 My client has been traveling. She's going away out of the
11 country on the 7th, so could we have another week? I don't
12 know if she's going to be back. I have to confer with the
13 client on these documents.

14 THE COURT: All right. I'll give you till June 7th.

15 MR. MORRISON: Thank you, Judge.

16 THE COURT: So that meet and confer needs to take
17 place sometime between May 17th and June 7th.

18 MR. MORRISON: Understood.

19 THE COURT: Now, whatever you're not able to
20 resolve, if it comes to that, and if you intend to move for
21 relief from the Court, I'm going to give you until the 18th to
22 file any letter motions to compel that might be necessary. So
23 that's June 18th. Give me a ball park idea of approximately
24 how many documents you've got at this point if you know. Have
25 you been Bates stamping them or did they come to you Bates

1 stamped?

2 MS. TUFARIELLO: No, they did not, Your Honor, and
3 that's going to be one of the issues. What Mr. Morrison did
4 in many of the requests for documents is he referred back to a
5 hard drive that he provided with me in conjunction with his
6 automatic disclosure statement back in March of 2012 when we
7 first appeared before you, and he keeps referring back to it.
8 Unfortunately, those documents are not Bates stamped. He has
9 not identified which documents are responsive to which
10 request. He has also, in the alternative pursuant to the
11 rules, the Federal Rules of Civil Procedure, he has not
12 provided me with any certification that they have been
13 providing as they are kept in the regular course of business.

14 THE COURT: In the ordinary course of business.
15 Okay. Let me stop you there for one minute. What about that,
16 Mr. Morrison? First of all, what did you give her? I know
17 you gave her a disk, but how were those document compiled?

18 MR. MORRISON: Well, Your Honor, in addition to
19 being -- they've added additional plaintiffs, the university.
20 They have all these documents. Their own client has the exact
21 documents they're looking for from us. So to begin with,
22 there was a report that was completed in October of 2011 to
23 the best of my knowledge. We provided the complete report to
24 them as part of the initial discoveries. They have those
25 documents. Then since that time, since we made the second

1 motion to dismiss under 12(b)(6), they added in their amended
2 pleading the university. The university is their client,
3 their plaintiff. They're asking us for records that they
4 already have. They can just reach out to the client and get
5 them. It's not clear to us why they got to have them now
6 twice.

7 THE COURT: Well look, I'll get to that. Hang on.
8 I'll get to that. But I'd like an answer to the question I
9 asked first --

10 MR. MORRISON: Yes, Your Honor.

11 THE COURT: -- and then I'll come back to this
12 issue. These documents are apparently produced on a disk,
13 whatever it was you produced up to this point, produced on a
14 disk but they're not Bates stamped within the disk and I'm
15 trying to find out if these were copied from the records as
16 they are kept in the ordinary course of business, or were they
17 selected from various places in your client's records?

18 MR. MORRISON: That's a fair -- may I just -- my
19 client is here.

20 THE COURT: Yes.

21 MR. MORRISON: I can ask her that right now.

22 [Pause in proceedings.]

23 MR. MORRISON: Your Honor, my client is standing
24 next to me and I want to make sure, since it's a scientific
25 matter, I'm speaking precisely and crisply. As far as I

1 understand, and if I'm in error, I'd like her to correct me, I
2 understand from the report that was --

3 THE COURT: Do me one favor if you would though
4 because it's important to me. These conferences are all
5 digitally recorded and if anybody wants the transcript or I
6 need to see the transcript, I need to get you on the
7 microphone or it won't pick up.

8 MR. MORRISON: Oh, yes, Your Honor.

9 THE COURT: So if you could remain seated --

10 MR. MORRISON: Would you sit next to --

11 THE COURT: -- your client could have a seat,
12 there's no problem.

13 MR. MORRISON: Yes, you can have a seat. My request
14 then, Your Honor, is that she answer the question --

15 THE COURT: All right.

16 MR. MORRISON: -- directly because it comes from her
17 reports.

18 THE COURT: Fine. If you're authorizing her to do
19 so, that's fine.

20 MR. MORRISON: Yes, Your Honor. For accuracy.

21 THE COURT: All right. Can you just identify
22 yourself, ma'am?

23 MS. GORFINKEL: I'm Vera Gorfinkel. I am an
24 associate professor at the State University of New York at
25 Stonybrook and I used to be principle investigator on the

1 project, research project, which was granted to the
2 university, actually to the research foundation of the State
3 University of New York [unintelligible].

4 THE COURT: Are you the person who collected the
5 documents that are on the disk that was given over to the
6 plaintiffs?

7 MS. GORFINKEL: These are not the documents. This
8 is progress report. It's just scientific results we obtained
9 during years 2009 through 2011.

10 THE COURT: Okay. Well, hold on for a second. When
11 I say documents, all I'm talking about are records, paper
12 records that are now apparently on this disk. That's all I
13 mean. So don't misconstrue what I'm saying. The fact is
14 they're copies of materials, documents, records, whatever you
15 want to call them. I'm asking you if you're the one who
16 gathered them and put them on the disk?

17 MS. GORFINKEL: Yes, I'm the one who put this on the
18 disk, yes.

19 THE COURT: Okay. And how were they collected?

20 MS. GORFINKEL: This disk is actually a copy of the
21 disk with the progress report which I handed in to the
22 research foundation for them to give it to Genometrica. I did
23 it, as far as I remember, on October 5, 2011, and they sent it
24 to Genometrica in October 2011.

25 THE COURT: All right.

1 MS. GORFINKEL: October 12th, just one week later.

2 THE COURT: All right. But I need to get back to
3 the idea here. Where did they come from? Did you pull these
4 materials or documents or records out of file cabinets? Were
5 they in an electronic database somewhere? How were they
6 collected?

7 MS. GORFINKEL: Those data were in electronic
8 format. These are files, data files, designs, descriptions,
9 some are reports, interim reports prepared by my colleagues in
10 the course of this project. All this was collected by me,
11 organized in a certain way. Then I prepared -- I myself
12 prepared table of content which is not just table of content
13 but every item in the table is explained what it is --

14 THE COURT: Okay.

15 MS. GORFINKEL: -- and how to approach, and what is
16 the conclusion from this specific part of research.

17 THE COURT: All right. But let me just back -- I
18 know this may sound very minuscule to you and picayune, but
19 they're questions I need to ask you.

20 MS. GORFINKEL: That's fine.

21 THE COURT: All right. When you pulled this
22 material together, it wasn't all in one place I take it. You
23 say it was in electronic format, but it came from different
24 people who were working on this project?

25 MS. GORFINKEL: Yes.

1 THE COURT: The data came from different people?

2 MS. GORFINKEL: Yes, of course.

3 THE COURT: Okay. And so how did you collect it?

4 MS. GORFINKEL: I asked my colleagues to prepare
5 pulls of data files and make sort of description of every day
6 the collection. So there is a pool of 100 files, and there is
7 -- every file is a result of some experimental work which is
8 done, but when you do experimental work, you write sort of --
9 it's called -- we call it read me. So you describe what you
10 targeted, what [unintelligible], what was the conditions of
11 receiving these data. So I asked my colleagues, several of my
12 colleagues to prepare data files, compose a pool of data files
13 with descriptions of what it was and how it was obtained. And
14 when they gave me those data files, I looked through them and
15 made some comments in this table of contents so that for the
16 reader who's not experienced in the field, will be clear what
17 this data collection is for.

18 THE COURT: All right. How many entries are there
19 in the table of contents?

20 MS. GORFINKEL: I don't remember exactly. It was --

21 THE COURT: Do you have just a rough approximation?

22 MS. GORFINKEL: Maybe 15, 20.

23 THE COURT: Okay. All right.

24 MS. GORFINKEL: I'm not sure.

25 THE COURT: All right.

1 MS. GORFINKEL: Not 100, not 100.

2 THE COURT: All right. All right. Based on what I
3 just heard, Mr. Morrison, what you're at least going to have
4 to do here is identify for the plaintiff which folder or which
5 data set in this table of contents, which you're claiming are
6 responsive documents, what it refers back to. So my question
7 was asked and you responded, or directed the attention back to
8 the disk. You're at least going to have to identify what
9 segment in the table of contents, what folder, or whatever you
10 want to call it, what that -- why those documents, for
11 example, are responsive or identifying the documents are
12 responsive to the particular request that was made by the
13 plaintiff. Understood?

14 MR. MORRISON: Yes, Your Honor.

15 MS. TUFARIELLO: One more item, Your Honor, since
16 we're talking about the items that are actually on the hard
17 drive, it's really not a disk, it's a hard drive because --

18 THE COURT: Okay.

19 MS. TUFARIELLO: -- there was a lot of information.
20 Some of the files that were actually included on the hard
21 drive are not readable in PDF format. They are provided in a
22 format that unfortunately I do not have the software, nor does
23 my client have the software, nor do my -- the sister law firm,
24 Hofheimer, Gartlir and Gross who are also representing
25 Genometrica have the software necessary for us to read it.

1 THE COURT: Do we know what software does read it?

2 MS. TUFARIELLO: All they would have to do is
3 convert them to PDF files and resend them to us. It was one
4 of the things that we were planning asking Mr. Morrison to
5 provide for us. But the problem is we had to actually at
6 least locate them on the hard drive so we can give some sort
7 of direction to Mr. Morrison about which files we were
8 complaining about and which files we were not, because there
9 are identification strings for these files on the hard drive
10 that we are able to access but we can't actually open them
11 because they're not in a format --

12 THE COURT: All right.

13 MR. MORRISON: -- that we are actually able to read.

14 THE COURT: All right. I get it. I'm assuming, and
15 certainly given the fact that these materials emanate from a
16 place like Stonybrook, that there is a capability of whatever
17 these particular documents are that she's going to point out
18 to you that their software won't read, there is a way to
19 convert them into a PDF document.

20 MS. GORFINKEL: No.

21 THE COURT: Okay.

22 MS. GORFINKEL: Sometimes it's not possible because
23 these are designers' files and if you convert it into PDF the
24 designer software allows you to move parts, to play with them,
25 to see the same part from behind. How can you do it with PDF?

1 I would have to generate hundreds of --

2 THE COURT: Is there some other software that can be
3 used to do that that's compatible with what they have?

4 MS. TUFARIELLO: They are special readers. I'm
5 familiar with the software that Dr. Gorfinkel is referring to
6 and sometimes it's Solid State it's called, or Solid Works.
7 Sometimes it's AutoCad readers. If they could forward us the
8 reader or a link that we can download the reader or a link
9 that we can download the reader, that may very well solve the
10 problem. But we won't know what reader we need to download
11 unless they sent it to us, or give us a link, or give us some
12 information to open it up. I'm fully familiar with the type
13 of software that Dr. Gorfinkel is talking about.

14 THE COURT: All right. Well, that will save you
15 some work if you can at least identify what the reader is that
16 they need to open this with.

17 MS. GORFINKEL: I'm not sure if it's really
18 necessary because the filename always contains the extension
19 which exactly shows what kind of software is used. See,
20 document, Word files, hair extension.doc. Acrobat has
21 extension PDF and designer Solid Work has specific extension,
22 Designer Inventor has a specific extension. I don't see
23 what's the problem. Of course I can provide this information.
24 Judging by the extension of the file you can always know how
25 to read it.

1 MS. TUFARIELLO: The electronic --

2 MS. GORFINKEL: I will provide --

3 MS. TUFARIELLO: -- protocol specifically says --

4 MS. GORFINKEL: -- it. I will provide the --

5 THE COURT: One at a time, one at a time. I'm
6 sorry.

7 MS. TUFARIELLO: The electronic protocol, the
8 protocol for electronic discovery that we eventually filed
9 with the Court and Your Honor so ordered specifically says
10 that they are required to provide us with PDF files or
11 alternatively with some sort of mechanism by which we can open
12 it. They're obligated under the order of this Court to do so.
13 We're willing to work with them and tell them give us a link
14 or give us -- we're not going to sit there and guess. I did
15 try, I assure this Court, I did try to open it in different
16 modes, and I was totally unable to.

17 THE COURT: All right. Well, Mr. Morrison, you may
18 not have realized at the time what you were signing up for
19 when you signed the ESI agreement, but if that provision is in
20 there, you're going to have to abide by it.

21 MR. MORRISON: I don't think we've had these
22 problems before. It may be their equipment is not
23 sophisticated. It may be --

24 THE COURT: I'm not sure what the issue is but if
25 the agreement was give it to them in PDF format or in some

1 format that's readable by them, then you're going to have to
2 do that.

3 MR. MORRISON: We will undertake, Your Honor --

4 THE COURT: You'll talk further and if your client
5 needs to talk further with plaintiff's counsel, you should try
6 to get that worked out before you leave here today at least in
7 terms of how you're going to proceed.

8 MR. MORRISON: We have the benefit of my client
9 here. She's the most sophisticated one.

10 THE COURT: Good. So it's good she's with you and
11 you'll see what you can work out before you leave here today.
12 All right?

13 MR. MORRISON: I will, Your Honor.

14 THE COURT: Okay.

15 MS. TUFARIELLO: Your Honor, if I may, the documents
16 that were in fact on the hard drive that were provided to us
17 are really non-responsive to about 75% of the remaining
18 requests for documents. It would be responsive only to a very
19 limited number of requests for documents that relate to the
20 research that Dr. Gorfinkel in fact engaged in and eventually
21 completed. There are a number of requests for documents for
22 financials, for accountings that were never provided to us
23 which of course we're going to be identifying in the letter of
24 deficiency by May 17. But I don't want the Court to be
25 misinformed or misled into believing that that particular hard

1 drive did in fact provide --

2 THE COURT: Contain everything you're looking for.

3 MS. TUFARIELLO: -- us with all the information.

4 THE COURT: No, I understand.

5 MS. TUFARIELLO: Okay.

6 THE COURT: I get it. All right. What else?

7 MS. TUFARIELLO: There is one outstanding issue that
8 is extremely pressing right now that the Court really needs to
9 know because it may very well involve the Court. If the Court
10 might recall, if Your Honor might recall, one of the reasons -
11 - I don't want to waste too much time with background
12 information, but here's the situation. While this case was
13 filed, when we filed this, when we Genometrica on behalf of
14 Genometrica filed this case in November a few years ago, 2011,
15 we filed our complaint. It was filed almost around the same
16 time, about a week before that, Professor Gorfinkel by and
17 through Mr. Morrison had filed a summons and notice in state
18 court. In that summons and notice, when we received the
19 summons and notice, we made a demand for the complaint. The
20 complaint was never given to us. And instead, what happened
21 was Dr. Gorfinkel, who at that time was being represented by
22 Meltzer Lippe, instead of giving us a complaint in response to
23 the demand that we made, they made a motion and stayed -- in
24 fact were successful in putting the whole state case on the
25 back burner so to speak pending the outcome of Judge Spatt's

1 decision. And in the process, in an affirmation in support of
2 the order to show cause at the state level, the attorney for
3 Dr. Gorfinkel, Ms. Jessica Mastrogiovanni, filed an
4 affirmation and in that affirmation she specifically said that
5 in the event Judge Spatt retained the federal case in his
6 court, Dr. Gorfinkel would dismiss the summons and notice at
7 the state level and file her claims as counterclaims in this
8 particular case here. When Judge Spatt issued his decision on
9 January 31st, I took the decision and immediately sent it to
10 Meltzer Lippe because obviously the attorneys are different.
11 Meltzer Lippe was representing Dr. Gorfinkel at the state
12 level, and Mr. Morrison is representing Dr. Gorfinkel here.
13 So I sent the decision directly to Ms. Mastrogiovanni and I
14 informed her that pursuant to her affirmation as well as her
15 follow-up representations to the Court, because we were in
16 front of Judge Whelan in Suffolk County and then we were
17 transferred to Judge Gozilo's [Ph.] jurisdiction in his hands.
18 I said pursuant to your representations, it's time for you to
19 dismiss the summons and notice because we still haven't
20 received the complaint. We only received the complaint a
21 couple of days ago, actually on Monday I believe. And we have
22 no problem, notwithstanding the fact that the time to join
23 parties and do all the things to the pleadings has passed. We
24 don't have any problem to stipulating to the inclusion of Dr.
25 Gorfinkel's claims as counterclaims in the federal action.

1 In response, instead of getting the dismissal and
2 seeing the claims of Dr. Gorfinkel's counterclaims in the
3 answer that was filed recently, instead Meltzer Lippe is being
4 replaced with Mr. Morrison, Mr. Rapp, and a new attorney on
5 the case, a gentleman by the name of Mr. Robert Greenberg.

6 It is our intent to bring a motion to dismiss the
7 complaint that was filed very, very recently on the basis of
8 estoppel because during the representations to the court at
9 state level, Ms. Mastrogiovanni admitted that the parties are
10 the same, the facts are the same and both state the underlying
11 facts. And for purposes of judicial economy it would be
12 better if the whole dispute is in fact decided at the -- in
13 this court for uniformity of decision and all the other good
14 reasons why applications are merged.

15 We did notify Mr. Greenberg from the get go as soon
16 as we realized that Meltzer Lippe was no longer on the case.
17 We did inform Mr. Greenberg that it was their obligation,
18 based on Ms. Mastrogiovanni's representations to the state
19 court that it was time for them to dismiss the complaint and
20 we would again have no issue with the claims being brought in
21 as counterclaims in this case.

22 To date we have not received any answer. And before
23 we started this hearing, I did inform Mr. Morrison once again
24 that if they did not follow through in accordance with the
25 representations that Ms. Mastrogiovanni made at the state

1 level, we would be making a motion to dismiss the complaint
2 there.

3 The reason I'm bringing all this to your attention,
4 Your Honor, right now is because we're in the process of
5 putting in a discovery schedule and I understand how important
6 it is to have a schedule that is going to get things done and
7 prepare us for trial. I don't want to have a situation a
8 month from now or two months from now where either party is
9 trying to either remove the state case and bring it here, or
10 alternatively, move to amend to include these counterclaims.

11 If the Court wants to extend a little bit the
12 discovery plan at this point to accommodate for these disputes
13 between the parties in connection with the state claims, then
14 perhaps that would be something that the Court might decide to
15 engage in. I'm not sure. I'm just telling the Court because
16 it is a very, very hot item right now on my table, on my desk,
17 and I don't want to mislead the Court in any way into thinking
18 that we're moving along when in fact we have these other
19 procedural issues that are kind of hanging over our heads.

20 THE COURT: All right.

21 MR. MORRISON: Should I respond, Your Honor?

22 THE COURT: You're certainly welcome to. It's up to
23 you.

24 MR. MORRISON: Thank you, Judge. May I
25 procedurally, may I hand up a copy of the verified complaint

1 that was served?

2 THE COURT: Thank you.

3 MR. MORRISON: Let me explain as I understand the
4 facts here. Now, I'm not Jessica Mastrogiovanni, I'm not part
5 of that law firm. All we have to rely upon are documents that
6 are in the Supreme Court Suffolk County file, and they appear
7 to be quite different than what's allocuted by my colleague.
8 So we're trying to cooperate.

9 Now, working backwards, Your Honor will notice at
10 the end of it there are some fax receipts indicating that
11 Betty was served with these papers by overnight on April 26th.
12 There's a Federal Express receipt, there is a fax receipt,
13 there is an email also sent to her. Our understanding based
14 upon what happened in state court is things have to happen
15 under a certain deadline which we relied upon from looking at
16 the court file. We've had Mr. Robert Greenberg out in Suffolk
17 County attending calendar calls during the month of April to
18 comply with the two stipulations that were signed by other
19 lawyers. So we have acted in the best of our ability to
20 conform with Suffolk County Supreme Court stipulations that
21 were so ordered by certain judges.

22 So I think we're dealing in good faith. We worked
23 within the deadlines provided and we served the verified
24 pleading upon Betty and her office. It was sent to the Court.
25 It's a filed document in that court. It was all done within

1 the understanding of what was signed by the lawyers in that
2 case.

3 Now, in that file there appears to be in March a
4 court order and a stipulation. I respect what Betty has said
5 about February. There's an order to show cause that says we'd
6 like a stay for 60 days until Judge Spatt makes a decision.
7 But when they appeared in court a month later, they entered
8 into a different document that seemed to indicate that the
9 understanding, you had the right under that stipulation and
10 order to serve the various people in the interim while the
11 case was pending before Judge Spatt. And then the time was
12 extended to answer in that case for a specific period of time.
13 It appears to be either ten or 20 days. It's not clear. But
14 we made copies of the entire file. I have instructed Robert
15 to provide a copy today, and to the best of my knowledge, he
16 did so. We can send her another copy if it's necessary.

17 The point I'm trying to make is that as far as we
18 understood what was happening, and there are two documents,
19 not just the order to show cause, but a subsequent document in
20 March of 2012 that permitted the answer to be served and filed
21 under certain circumstances and we believe we've complied with
22 those circumstances, and we in fact did prepare the answer,
23 verify it, filed it, and served it on my colleague by
24 overnight fax and everything else on the 26th.

25 There's been a reasonable suggestion made here that

1 both cases belong in this court. We respect that. So two
2 things can happen. We can ask permission of this court to
3 remove the state court proceeding. I don't think that she's
4 challenging the answer or what's contained in the answer. She
5 just, for judicial economy, it makes a great deal of sense to
6 have the complaint in the state court become a counterclaim
7 over here. So that we understand a respect. What we have a
8 procedural issue is at best to remove it from that court to
9 here. There's an application to be made. We have an office
10 and we can make that application, we have [unintelligible] to
11 bring the case over here.

12 So I'm just looking for a mechanism, a methodology
13 to bring them both together that avoids a lot of this
14 procedural impasse. And I'm open to suggestions and I'll do
15 whatever the Court directs.

16 THE COURT: Well frankly, I'm not in a position to
17 be giving legal advice certainly. Whatever you choose to do
18 is up to you. I mean there are a number of ways this can be
19 done, not the least of which is removing it here and filing it
20 as a related case. But you know, it depends on what the
21 ultimate game plan is here and I don't know what that is, and
22 frankly I'm not comfortable offering advice as to how anybody
23 should be achieving the ends they think are appropriate at
24 this point. So I'm going to leave it at that and you'll
25 figure out what you need to do. So I'm sure there are lots of

1 other lawyers out there who can give you advice as to how this
2 should be taken care of.

3 MR. MORRISON: I think I may have misspoken. I was
4 not really looking for advice, Your Honor, I was looking for
5 direction. I think I know what to do.`

6 THE COURT: Okay.

7 MR. MORRISON: It would be normally removal. My
8 colleague didn't want to have the time and expense to make the
9 application. I think in our office we're prepared to do that
10 if it's deemed by consent, then the problem should go away.

11 THE COURT: All right. Well, I will leave that to
12 the two of you to work out whatever resolution one hopes you
13 can do by consent at this point.

14 MR. MORRISON: I think so, Judge. Now, in the
15 pleading itself, Your Honor, under state law there's a time
16 for them to answer, so whatever stipulation we have to make as
17 to extend their time to answer so that's all included because
18 we're going to move from state practice to federal practice
19 and they would have an opportunity to respond, or if it's a
20 counterclaim, respond to the counterclaim. That would also
21 affect the discovery. So I would like to put it into the mix
22 today. I don't think there's a great objection from my
23 colleague to bringing the case over here, but I think we may
24 need some extra time for the discovery process once it's
25 involved.

1 THE COURT: Well, let me tell you what I am planning
2 on doing. I can only deal with what's in front of me that's
3 my case at the moment and that's what I'm planning to do. I'm
4 going to put a discovery schedule in place. But even when the
5 case gets over here or comes over here in the form of a
6 counterclaim, then you'll both get on the phone, call
7 chambers, and set up a conference and we'll make whatever
8 adjustments may be necessary at that point to the discovery
9 schedule. All right?

10 MR. MORRISON: That's fair, Your Honor.

11 THE COURT: Okay.

12 MS. TUFARIELLO: Thank you, Your Honor. And that
13 was the whole purpose of this conversation --

14 THE COURT: All right.

15 MS. TUFARIELLO: -- simply to alert the Court that
16 this was an issue that the Court may have to deal with going
17 forward. And in view of the fact that the Eastern District is
18 moving towards a rocket docket --

19 THE COURT: Yes.

20 MS. TUFARIELLO: -- I wanted to make it very, very
21 clear that we may have this issue going forward.

22 THE COURT: Well, that's fine. I appreciate the
23 information from both of you. And frankly, I'll probably get
24 in touch with Judge Chen to let her know what's going on so
25 she'll understand if we need to revamp some of the discovery

1 schedule as that becomes necessary.

2 MS. TUFARIELLO: Okay.

3 MR. MORRISON: May I have one more thing, Judge?

4 THE COURT: This case may take a little longer than
5 otherwise we'd like to think since --

6 MR. MORRISON: I don't wish to forget, Your Honor.

7 THE COURT: -- once the case is --

8 MR. MORRISON: I'm sorry. I didn't want to
9 interrupt you. May I add something?

10 THE COURT: Go ahead.

11 MR. MORRISON: Thank you. We are next in state
12 court on a motion for a stay to extend the time for all of
13 this. That's on Monday the 6th. I will be in state court at
14 that time. I think our request would be we have a verified
15 complaint. Under state law, we have ten days to amend it. So
16 we may be amending that document within the days and I may be
17 -- I will be appearing in Suffolk Supreme Court in the motion
18 part on the 6th. So we will inform the state court judge
19 what's happening --

20 THE COURT: Okay.

21 MR. MORRISON: -- at the same time. I think we have
22 that duty. It's a state court proceeding.

23 THE COURT: All right.

24 MR. MORRISON: Thank you. I just want my colleague
25 to know that.

1 THE COURT: That's fine. What I was about to say,
2 and part of the reason I would notify Judge Chen at this point
3 is all of our cases, once they hit the three year mark, are
4 automatically on the watch list so to speak in Washington.
5 They have to be reported. And so there has to be obviously a
6 good reason why a case would extend into the 36 month and move
7 forward from there. Right now based on what I have in front
8 of me, we're not going to hit the 36 month mark. However,
9 based on what I'm hearing, that may change and there's no way
10 for anybody to predict that until I see what happens. And as
11 I said, I'm not going to rule on anything that's not in front
12 of me at the moment. And so from here on, I'm just going to
13 proceed to get the discovery schedule in place. And as I
14 said, if and when the case gets here, you'll both get on the
15 phone and call chambers, set up a conference and we'll move
16 from there. All right?

17 All right. Let me go back for a minute. We have a
18 process set up now for the deficiency letter to go out, the
19 period of time for the meet and confer, and then the deadline
20 to file any motions to compel or any other motions that you
21 deem are appropriate at that point. I've also directed that
22 since the documents are not Bates stamped and based on the
23 information that I received from one of the defendants, the
24 professor here, this afternoon based on the way these were
25 collected, I've directed defendant's counsel to go back and

1 line up their responses that have been provided and that will
2 be provided to designate what item or folder in that table of
3 contents that was provided the specific response and the
4 documents correlate to. And I put that in the order that goes
5 up later today as well. More likely tomorrow at this rate.

6 Now, you're also going to continue a discussion
7 since apparently there's been no response according to
8 plaintiff's counsel with regard to the financial data. And so
9 you'll make that part of your meet and confer, and I assume
10 part of your deficiency letter as you just stated.

11 So that brings us up to June 18th at this point. And
12 I suspect there may be some things that you can't agree on,
13 although I certainly hope there's some movement here and
14 there's just some agreement so that the information gets
15 produced.

16 What I want to talk about for a moment are
17 depositions and I'd like to hear from each of you whose
18 depositions you intend to take in the case. So Ms.
19 Tufariello, why don't you go first?

20 MR. MORRISON: Your Honor, we omitted one thing, I
21 say respectfully. We had served demands upon them and they
22 did not respond to them, so --

23 THE COURT: When did you serve it?

24 MR. MORRISON: Within the time line we've had here.
25 She just didn't respond. We have received nothing from them.

1 So before we get to the depositions, within the earlier time
2 line we served demands for interrogatories and demands for
3 documents.

4 THE COURT: Well, hold on for one minute.

5 MR. MORRISON: There was some indication from her
6 office they were not going to do that until they were
7 satisfied about something else, if I understand her correctly.

8 [Pause in proceedings.]

9 [Judge's microphone no longer operating.]

10 THE COURT: All right. So we're looking at case
11 management [inaudible] took place on March 12th of last year
12 called for the first round of document demands,
13 interrogatories to be served by April 13th and responses to be
14 served by May 29th. So apparently defendant's counsel didn't
15 even receive any responses to his discovery demands, so Ms.
16 Tufariello, tell me what you [inaudible].

17 MS. TUFARIELLO: Okay. We did receive a request for
18 documents. I don't recall if they were interrogatories. For
19 purposes of this meeting I would be willing, just for purposes
20 of this meeting because I don't have my files with me, to say
21 that perhaps interrogatories were served upon us as well,
22 although I don't recall them. They were served upon us
23 significantly later, after the dates that the Court had set on
24 the calendar. Upon receipt, we actually sent emails to Mr.
25 Morrison and informed him that as far as we were concerned,

1 these requests for discovery were inappropriate and we asked
2 him to withdraw them. And we also informed him to give us a
3 call and talk to us. We didn't hear from him. We also said -
4 -

5 THE COURT: Let me stop you here for a second.

6 MR. MORRISON: Okay.

7 THE COURT: Mr. Morrison, when did you serve the
8 demands?

9 MR. MORRISON: They were timely, Judge. I don't
10 have it in front of me right now.

11 THE COURT: By April 13th?

12 MR. MORRISON: We believe them to be timely. And I
13 spoke to her on the phone. She gave me a different reason
14 that she just wasn't going to do it. I think her issue was
15 that she wanted to first see the documents -- there was
16 something else she wanted to see first before she was going to
17 respond to them. That was my understanding of it and --

18 THE COURT: All right. Well, there's a critical
19 point here and that is in the case management order it said
20 very clearly you had to serve by the dates I gave you and if
21 you weren't going to be able to serve by that time, you need
22 an extension and you had to come back to the court to get one.

23 MR. MORRISON: I understand that. My understanding
24 was that was not the issue. We're very well structured in
25 the office. The notices went out, and I called her and said

1 where are they? And then I got this other story that we're
2 not going to give them to you because we need something else.
3 It was something like that.

4 THE COURT: All right. I'm assuming when you served
5 these you have all the proof of services?

6 MR. MORRISON: Oh, we do, Your Honor. I can email
7 it to Your Honor or fax it to you.

8 THE COURT: Okay. All right. [Inaudible].

9 MR. MORRISON: I just want my responses.

10 THE COURT: Well, I'm trying to get to the bottom of
11 this. Go ahead. So you're saying --

12 MS. TUFARIELLO: I'm not exactly --

13 THE COURT: -- you didn't get them, you didn't get
14 them on time.

15 MS. TUFARIELLO: That is correct, Your Honor. I'm
16 sitting here because I really don't know how to respond to the
17 misrepresentations that are being made to this Court right now
18 and words being put in my mouth. The requests for discovery
19 were provided to us after the deadline. I don't recall the
20 date right now. I'd be more than happy to provide the Court
21 with my receipt of the documents, when I received them, my
22 response which was pretty adamant that I was not going to be
23 responding because these were provided to us way after April
24 13, Your Honor. I don't remember the exact date but they were
25 provided to us way after April 13. I asked counsel to

1 withdraw it for that reason. I never heard back from them.

2 THE COURT: All right. Well, here's what we're
3 going to do. Mr. Morrison, you're going to send me whatever
4 proof you have of confirmation of service of those requests
5 and when that was done. And Ms. Tufariello, you're going to
6 send me whatever you can show me as to the receipt date when
7 you got them. All right?

8 MS. TUFARIELLO: Yes, Your Honor.

9 THE COURT: Today is Tuesday, so I want the filings
10 Monday at the latest.

11 MS. TUFARIELLO: Your Honor, as I indicated at the
12 very beginning, it's Greek Orthodox Easter.

13 THE COURT: All right. Well, you're observing.

14 MS. TUFARIELLO: Yes.

15 THE COURT: Okay. When are you back in the office?

16 MS. TUFARIELLO: I will be back on Monday, so I'll
17 probably be able to get it out to you by Wednesday.

18 THE COURT: All right. So next Wednesday.

19 MS. TUFARIELLO: Just make sure.

20 THE COURT: All right. Let me just say, and I'm not
21 presuming anything here, but Mr. Morrison, if it turns out
22 when you go back that they were served any period of time
23 after April 13th you're going to have to do a double check and
24 [inaudible].

25 MR. MORRISON: I understand. We may have to seek an

1 extension if she -- it's not my recollection. She got them
2 and there was another issue that she raised at the time.

3 THE COURT: All right. Well, you go back and check
4 your files, all right?

5 MR. MORRISON: I will, Your Honor.

6 THE COURT: All right. I'm not making any ruling on
7 this until I get both the sets of information.

8 MR. MORRISON: In the meantime, would you also
9 consider that we've had a second set of pleadings. The case
10 has been expanded. It may be necessary just to start the
11 discovery process anew on account of the new issue that's been
12 raised. We have a new plaintiff in the case.

13 THE COURT: Well, there's nothing to prevent either
14 side from serving supplemental demands based on the fact that
15 there's a new pleading.

16 MR. MORRISON: I understand.

17 THE COURT: So I'd like to, you know, I'd like to
18 have some order involving what you're doing here which means
19 it was first set out, and those haven't been responded to, I
20 want to get to the bottom of why that's the case.

21 MR. MORRISON: That's fair, Judge.

22 THE COURT: You certainly can serve supplemental
23 demands that go to the new issues that are raised, or the new
24 parties that are raised. But I certainly don't want you
25 repeating anything that went out in the first one.

1 MR. MORRISON: Would Your Honor consider one thing?
2 It becomes important to us and to my client. After Judge
3 Spatt's most recent decision, we're left with one federal
4 unfair competition claim and the bulk of the claims,
5 everything else is state based claims which -- so we've spent
6 a great deal of time and Your Honor's time here covering that
7 one theory with all these records from the university and
8 everything else. But in the real world, this case
9 predominantly involves state law claims. And now we're
10 bringing three more here. So I'm saying -- so the discovery
11 process right now is going to really be relating to state
12 based claims. That's where we --

13 THE COURT: Well, that may be the case. As I said,
14 we're going to impose some order in the process here. You
15 have an original set of demands that went out that should have
16 been responded to. And I need to get to the bottom of what
17 actually happened with those.

18 MR. MORRISON: Yes, Your Honor.

19 THE COURT: You're entitled to another set,
20 supplement those demands based on the new claims and/or new
21 parties who came in as a result of the amended complaint.
22 You'll also get another crack at this if you need it in light
23 of transferring the case over to the state court. But that's
24 how the process works here and that's how it's going to be
25 done.

1 MR. MORRISON: Since it is a holiday season, Judge,
2 there's like an epiphany here. This case may really belong in
3 the state court since there's only one federal claim. The
4 rest of these cases really belong --

5 THE COURT: That may be the case, but it's enough to
6 maintain federal jurisdiction. So I don't know what you want
7 me to do about that.

8 MR. MORRISON: No, I'm making an observation, Judge.

9 THE COURT: Okay.

10 MR. MORRISON: But we've spent so much time on the
11 federal case which is the smallest part of what's happening in
12 the theory of the case.

13 THE COURT: Well look, I'm not so sure [inaudible]
14 necessarily agree with you on that interpretation. Maybe she
15 does. But it is what it is. And as I said, we're going to
16 impose some order or process here [inaudible].

17 MR. MORRISON: That's fair, Judge. Thank you.

18 THE COURT: All right.

19 MS. TUFARIELLO: Your Honor, just for the record --

20 THE COURT: Yes.

21 MS. TUFARIELLO: -- since we're busy making it,
22 there is not one federal claim. There's also a claim for
23 patent infringement, Your Honor, which is very serious. It's
24 one of the first causes of action that we alleged in our
25 amended complaint. That was one of the reasons why we did

1 bring in under our exclusive license agreement the research
2 foundation who happens to be the owner of patents that we
3 believe certain of the defendants have actually infringed
4 upon.

5 THE COURT: [Inaudible].

6 MS. TUFARIELLO: So just for the record.

7 THE COURT: Okay. Well, and I know that you'd
8 rather not talk about this today but I do want to hear at this
9 point -- and again, I'm not prejudicing anybody's rights here
10 today, but I want to get some idea as to whose depositions you
11 will be needing to be taken on behalf of your clients. So let
12 me start with Ms. Tufariello.

13 MS. TUFARIELLO: Well, right now we most definitely
14 will be taking the deposition of Mr. Gorbovitski, Boris
15 Gorbovitski, Ms. Vera Gorfinkel, Dr. Gorfinkel, whoever they
16 will identify as a 30(b)(6) representative, but Advanced
17 Biomedical Machines, Inc., ABMM. We will be subpoenaing and
18 requesting the deposition of Dr. Gorfinkel's son, Michael
19 Gorbovitski. We plan on having at least two experts,
20 financial auditor who will be looking into ABMM's finances as
21 well as Dr. Gorfinkel's finances, as well as Dr.
22 Gorbovitski's, or Mr. Gorbovitski, I'm not sure Mr.
23 Gorbovitski holds a Ph.D. So we definitely will have a
24 financial auditor. Right now we're interviewing at least two
25 that I'm aware of. We will also have a patent infringement

1 expert, someone who will come in and explain to the Court on
2 the one hand teach the Court a little bit about the technology
3 associated with the patents that are at issue and --

4 THE COURT: [Inaudible] construction [inaudible].

5 MS. TUFARIELLO: Exactly, exactly. So we do
6 anticipate a Markman Hearing.

7 THE COURT: Yes.

8 MS. TUFARIELLO: That is, without really getting
9 into the nitty gritty, I'm sure there are others that my co-
10 counsel at Hofheimer, Gartlir and Gross probably have thought
11 up in the interim and I haven't had an opportunity to discuss
12 it with them. But at the most superficial level, these are
13 the individuals. If there are additional individuals -- for
14 example, we know for a fact that there are certain post-doc
15 personnel, people who are working towards doing their
16 fellowships or earning Ph.Ds or post Ph.Ds studies working
17 with Professor Gorfinkel. If they were involved in these, in
18 the technology associated and at issue in this dispute, more
19 likely than not we're going to be requesting their depositions
20 as well. And it's my understanding that there's an extensive
21 staff at the foundation, at the university.

22 THE COURT: All right. The other thing that I want
23 everybody on notice of, I don't want to hear that anybody is
24 not available during the summer because school is out or
25 [inaudible]. So cooperate. You folks need to talk to each

1 other or at some point in the not too distant future we're
2 going to have a conference to talk about this and you should
3 be prepared, at least in your own minds, a time frame in which
4 you're going to serve these notices of depositions so people
5 have sufficient time to prepare.

6 All right. Mr. Morrison, what about any depositions
7 that you intend to take on behalf of your client?

8 MR. MORRISON: Your Honor, I'd just like to comment
9 on the patent infringement issue. Their patents are owned by
10 the university and not by this plaintiff, Genometrica. They
11 have license agreements. They're enforcing these license
12 agreements. There was a previous claim made at the university
13 of patent infringement against Ms. Gorfinkel brought by Betty
14 and the same lawyers and the same people, Genometrica, and it
15 was decided that there was no patent infringement. We may be
16 resisting the issue, raising this issue again when there's
17 already been a determination of that by the university that
18 there was no patent infringement against either one.

19 THE COURT: And that determination was made in a
20 federal court?

21 MR. MORRISON: Actually, it was made by the
22 university. They raised the same issue before. So there
23 would be issue preclusion, Your Honor. And it's equitable
24 estoppel. The same issue was raised that they raised here.

25 THE COURT: Okay.

1 MR. MORRISON: So that is part of the amended
2 complaint, the complaint that's in state court. So that's
3 going to end up over here. But I'm saying this, it's in the
4 case, so we wish to disclose that to Your Honor.

5 As far as our witnesses are concerned --

6 THE COURT: Let me just -- we're going to talk more
7 about what you're going to do with that procedurally the next
8 time we have a conference.

9 MR. MORRISON: Thank you.

10 THE COURT: I want to make sure that if there is
11 [inaudible] to rule on that issue that that [inaudible]. All
12 right?

13 MR. MORRISON: Okay. I may have to bring some sort
14 of an application to -- here's the thing. The university that
15 they've named, they were asked to sign a form which they
16 declined to sign and they were named as a party plaintiff
17 based upon the license agreement. They have indicated they
18 don't want to stay in this case, they don't want to be a party
19 plaintiff. They have no grievance against their distinguished
20 Professor Gorfinkel. So we have a mechanical methodology as
21 to how to get them out of the case. They don't want to be in
22 the case and they've indicated they don't belong in this case,
23 and they've indicated that to the other side. They indicated
24 it to us anyway.

25 THE COURT: All right.

1 MR. MORRISON: So that's another issue we'd like
2 resolved. We have a reluctant plaintiff.

3 THE COURT: All right.

4 MR. MORRISON: Okay.

5 MS. TUFARIELLO: Your Honor, if I may?

6 THE COURT: To that issue, we're going to have
7 plenty of time to talk about that at the next conference, so -
8 -

9 MS. TUFARIELLO: Okay.

10 THE COURT: -- unless there's something that's
11 really critical, I'd rather just focus right now on what we're
12 trying to get accomplished today.

13 MS. TUFARIELLO: Your Honor, just very, very
14 briefly. They had a bite at the apple. They could have made
15 that argument when we amended the complaint and alleged patent
16 infringement. If they had reason to believe that the
17 foundation's decision not to proceed against Professor
18 Gorfinkel for patent infringement, they could have brought
19 that out if it had an issue preclusion effect right in the
20 first instance when they brought their motion to dismiss the
21 amended complaint that was filed in response to the first
22 motion to dismiss. So they've already had two bites at the
23 apple so to speak for this so-called issue preclusion.

24 By way of background, Your Honor --

25 THE COURT: That may be something that pops up again

1 a summary judgment anyway, so we'll see what happens.

2 MS. TUFARIELLO: Okay. By way of background, our
3 exclusive license agreement obligated Genometrica to in fact
4 inform the research foundation if Genometrica believed that
5 there was someone who was infringing or had infringed in its
6 opinion the patents. The foundation had 30 days to take
7 action, either respond or by its silence communicate that it
8 wasn't going to be doing anything. As soon as the foundation
9 received notification, they did nothing. They never informed
10 us that they were going to be proceeding against Professor
11 Gorfinkel and ABMM and Mr. Gorbovitski. And as a result, it
12 triggered that clause in the license agreement that permitted
13 us to assert the patent infringement lawsuit against the
14 defendants that we have made.

15 THE COURT: All right. Well, I'm going to forewarn
16 Judge Chen that she's looking forward to a lot of motion
17 practice here. All right. Let's talk about the depositions
18 the defendants are going to take.

19 MR. MORRISON: Well, we have served -- the witnesses
20 would be Ralf Vayntrub. He's the --

21 THE COURT: Spell that for me.

22 MR. MORRISON: V-A-Y-N-T-R-U-B. He's the -- he's
23 been served and he's in the -- he's the principal of Invar
24 Consulting. He's the principal of Genometrica, Limited. He's
25 central to this whole controversy.

1 THE COURT: All right. And you said he's been
2 served with a notice of deposition?

3 MS. TUFARIELLO: No.

4 MR. MORRISON: Well yeah, we can also designate him
5 because he's a principal of Genometrica. He's one of the
6 founding partners, so --

7 THE COURT: No, I get all that. I'm just saying did
8 you notice his deposition?

9 MS. TUFARIELLO: No, we didn't. We were waiting for
10 today, Judge.

11 THE COURT: All right. Who else?

12 MR. MORRISON: So Invar, and then Genometrica
13 itself, and then Genometrica Research. And then we have a
14 peculiar thing that's happened here, Judge. I've left it till
15 last. These gentlemen, the co-counsel's law firm have
16 actually interviewed Boris Gorbovitski at the offices of his
17 attorney and took statements from him, and there's an issue of
18 disqualification of that law firm. Before this litigation
19 began, two of their partners met with partners of Meltzer
20 Lippe and they communicated with them and took statements from
21 my client, discharged him as an officer and director of
22 Genometrica, asked for an accounting of his work, and then
23 took that information down and it's become part and parcel of
24 this litigation. It's part of the involved complaint. So
25 they are witnesses. So we're going to call for the lawyers to

1 testify in this case as to their interrogation and taking of
2 documentation from a defendant in this case, Boris
3 Gorbovitski. So one of our additional motions would be we're
4 going to call for the testimony of that law firm, of the
5 Hofheimer Law Firm and its partners, Mr. Klein and his other
6 colleague and also to disqualify. I don't believe they can be
7 attorneys in this case and be witnesses at the same time.

8 THE COURT: Okay.

9 MR. MORRISON: So --

10 THE COURT: Well, you'll make your motion to
11 disqualify them.

12 MR. MORRISON: I will, Your Honor.

13 THE COURT: [Inaudible].

14 MR. MORRISON: So Judge Chen has much to do.

15 THE COURT: [Inaudible]. What else?

16 MR. MORRISON: I would need some time, Judge. I
17 wasn't --

18 THE COURT: All right.

19 MR. MORRISON: If I can supplement the list, I'll do
20 it.

21 THE COURT: All right. Well, here's what I want you
22 to do. Once I get to June 18 in particular, which is the
23 deadline for you to submit any motions [inaudible], if I get
24 motions or if I don't get motions, from that date I'm going to
25 set up the next conference date and I want to take a look at

1 any motions I get provided first so [inaudible]. But at that
2 conference, I'm directing you to be prepared. First of all,
3 I'm not sure what's going to happen in the interim with regard
4 to the state court case, but if there is going to be further
5 paper discovery, and I use that term loosely, or supplemental
6 demands to be made, you're going to be prepared to talk to me
7 about that and we're going to set deadlines for that. And
8 then I'm going to give you a time frame in which the
9 depositions will be taken [inaudible] take it up again at the
10 next conference. So I'll just forewarn you because I want to
11 make sure everybody is prepared and you've spoken to the
12 people who are involved in terms of making sure people get
13 word and they can make themselves available for deposition
14 process as well. And [inaudible] to move things along. All
15 right?

16 MR. MORRISON: Your Honor, may we serve the list of
17 experts in the meantime? We're concerned. Are we permitted
18 to do that between now and June 18th? We have experts that we
19 want to bring and we also have supplemental responses. May we
20 prepare and serve them before June 18th?

21 THE COURT: Well, let me make sure I understand what
22 you're asking. You said you have experts you want to use?

23 MR. MORRISON: Yes, but I'd like -- again, it's
24 summer, so we have to tell them now for their schedules.
25 They're from -- one of them is at Stanford in California and

1 we have to arrange and tell them and notify them and provide
2 their qualifications. They may want to examine them, take
3 depositions of them. So I think it's pretty important. We'd
4 like to put that -- do that between now and June 18th.

5 THE COURT: Okay. Well, let me make sure I
6 understand what you're saying. Are you asking to have a date
7 certain that your experts serve their expert reports and all
8 their disclosures?

9 MR. MORRISON: I just want to notify them now that
10 we intend to call these experts and notify them --

11 THE COURT: You just want to disclose who the
12 experts are?

13 MR. MORRISON: And I also want to disclose that we
14 also will provide additional supplemental disclosures between
15 now and -- I just don't want to lose the next month and a
16 half.

17 THE COURT: [Inaudible]. Look, if you want --
18 there's nothing that prevents you from serving the disclosures
19 of who the experts are on plaintiff's counsel at any point.
20 I'm not preventing you from doing that, so go ahead.

21 MR. MORRISON: It's a demand, Your Honor, of --

22 THE COURT: We're going to at some point set a
23 separate schedule for expert discovery generally to serve
24 reports, to serve all the disclosures referring to Rule 26.
25 We're not anywhere near that at this juncture, but if you want

1 to proceed to identify your experts and disclose who they are
2 to plaintiff's counsel, go ahead.

3 MR. MORRISON: Also, there's some issue that she's
4 not getting documents from us. I'd like to serve the document
5 demands and the interrogatories are very important to us, and
6 do it between now and the 18th, Your Honor.

7 THE COURT: You mean a supplemental demand?

8 MR. MORRISON: Yes, Your Honor.

9 THE COURT: Go ahead. I'm still up in the air
10 about, I told you, about a decision I'm going to make with
11 regard to the first round, until I get this information that
12 you need to provide me with.

13 MR. MORRISON: I just don't want the same issue that
14 we didn't get them again and --

15 THE COURT: Look, there's nothing preventing you
16 from serving -- look, from the moment the amended complaint is
17 filed and the answer was filed, there's nothing to prevent you
18 at that point from serving any supplemental.

19 MR. MORRISON: Thank you.

20 THE COURT: Okay?

21 MR. MORRISON: Thank you. It's clear.

22 THE COURT: So go ahead.

23 MR. MORRISON: That's perfectly clear.

24 MS. TUFARIELLO: Your Honor, if I may?

25 THE COURT: Yes. Just give me one second.

1 MS. TUFARIELLO: Sure.

2 [Pause in proceedings.]

3 MR. MORRISON: Some water?

4 MS. TUFARIELLO: Thank you.

5 THE COURT: Yes, go ahead.

6 MS. TUFARIELLO: Your Honor, I just want to make
7 sure the record reflects clearly that Mr. Morrison, if he
8 wishes to serve our firm with supplemental requests, they
9 would be supplemental requests and not --

10 THE COURT: He already said that.

11 MS. TUFARIELLO: -- copies of the original requests
12 --

13 THE COURT: Understood.

14 MS. TUFARIELLO: -- that were sent to us.

15 THE COURT: That's understood. Now, whatever
16 supplemental discovery is to be conducted by either side goes
17 to the additional [inaudible] or causes of action asserted in
18 the amended complaint and the [inaudible] asserted in the
19 amended complaint and that's it. All right? All right. Is
20 there anything else we need to address for today's purposes,
21 Ms. Tufariello?

22 MS. TUFARIELLO: As of the moment, the most pressing
23 were the deficiencies, discovery, so at this moment I can't
24 think of any others but I'm sure by June 18th we'll have plenty
25 to deal with.

1 THE COURT: All right. And you'll be hearing from
2 me shortly after June 18th about the next conference as well,
3 so --

4 MS. TUFARIELLO: Okay. All right.

5 THE COURT: Mr. Morrison, anything you want to
6 address?

7 MR. MORRISON: I want to say thank you.

8 THE COURT: All right.

9 MS. TUFARIELLO: Indeed.

10 THE COURT: Go out and have a nice dinner. It's
11 almost 6:30. It's everybody's time to eat. All right?

12 MS. TUFARIELLO: All right.

13 THE COURT: Have a good evening. I'll put this into
14 an order. I'm pretty sure it's not going out tonight, but it
15 will go out tomorrow. All right?

16 MS. TUFARIELLO: Okay. If we need to get a copy of
17 the transcript --

18 THE COURT: Yes. If you want that, I will -- let me
19 know now. I'll have my courtroom --

20 MS. TUFARIELLO: I would like to get a copy of the
21 transcript.

22 THE COURT: -- deputy [inaudible] --

23 MR. MORRISON: Order a copy of the transcript for
24 the --

25 THE COURT: All right?

1 MS. TUFARIELLO: Yes.

2 MR. MORRISON: We'll order this --

3 MS. TUFARIELLO: They'll call us tomorrow for the
4 particular --

5 THE COURT: Mary Ryan, who is my courtroom deputy,
6 will be in touch with you tomorrow.

7 MS. TUFARIELLO: Very good.

8 THE COURT: All right?

9 MS. TUFARIELLO: Thank you, Your Honor.

10 THE COURT: All right. Mr. Morrison, do you have
11 the same request or not?

12 MR. MORRISON: Yes, I would like the transcript.

13 THE COURT: Okay. So I'll have her call you as
14 well. All right. As I said, have a good evening.

15 MS. TUFARIELLO: Thank you. You too, Your Honor.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.

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5 _____
6 Mary Greco

7 Dated: May 3, 2013
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